



UNIFORM CIVIL CODE.

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ABSTRACT

In India, there exists Hinduism, Islam, Jainism, Buddhism, , Sikhism and other communities classified as per their religious beliefs. Indian Constitution, under article 44, states that the state shall follow a Uniform Civil Code for all citizens, it is a Directive principle of state policy, rights which cannot be enforced in the court of law. Uniform civil code takes into account the element of human right, Though Uniform civil code applies to citizens residing within the territory of India, and human rights are available for both citizens as well as non-citizens, there is a nexus between them as implementation of Uniform civil code facilitates safeguarding of human rights and, prevention of practices contrary to philosophy of human rights. Prevalence of personal laws over the uniform civil code is a highly controversial matter, especially with regard to India, where women under Hindu, Muslim and Christian laws continue to suffer inequalities in the matter of marriage, succession, divorce and inheritance. It is highly inequitable for any law whether Christian, Muslim or Hindu to trample over woman's right in a progressive country like India. According to Christians, an unwed women cannot take guardianship of her own child without prior permission of the father of her child, the Joint Woman's Program of the Christian church has been asking for reforms, but reforms are not the

best possible solution for this never ending plight of Indian constitution, which aims to uphold its supremacy of equality without affecting the cultural pluralism. Every law or code comparatively looks down upon women and minor religious groups, for instance, Muslim personal law states that a daughter's inheritance is One half of son's inheritance right based on the fact that a woman's worth is one half of a man. On the contrary India's Succession act was not free from gender bias-ness before, but amendments were made and daughters were given equal rights to ancestral property. Interestingly, "polygamy", is a pro-visionary law, a practice based on natural justice which contradicts the Quran itself which says, no Islamic law poses against doctrine of Equity. The infamous Shah Bano case witnessed an uproar which led to passing of much criticized Muslims women protection bill, under Rajiv Gandhi government, later in Sarla Mugdal case ,the judgment was highly criticized for the remarks made on minorities and invocation of Uniform Civil code, Similarly, a Christian women is not given guardianship of her child as she refused to disclose the name of the father, is not practiced in Muslim and Hindu law, where primacy is given to women in such cases ,be it legitimate or illegitimate child . On a broader perspective, there exists LGBTS and humans who do not fall under the male-female category, for the purpose of article 44 and 14 they fall within the definition of citizens of the country. Uniform civil code has a broader approach towards nation integration as it beneficial for all other elements, other than man and woman, of society who are still struggling to



be recognized as humans to avail basic human rights.

Keyword : *directive principle of state policy ,inequalities, trample over woman’s rights, never ending plight, cultural pluralism, doctrine of equity, natural justice, nation Integration.*

1.UNIFORM LAWS OR UNIFORM CIVIL CODE :

Article 44 of Constitution of India states the Directive Principle of State Policy (herein after called “DPSP)that “The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.”¹

However, in practice, it isn't so, the cultural pluralism with which our country is endowed, carries with it, a huge baggage of customs, which again carry the burden of belief and morality.

India is a democratic country, giving highest possible liberties in the form of fundamental rights and DPSP ’s , fundamental rights being justiciable in nature, that is, can be enforced in the court of law whereas DPSP ’s are non-justiciable, cannot be generally enforced in the court of law.

ART.25- 28 of Constitution of India, talks about the Fundamental Rights of freedom of practicing any religion and ART.29 and 30 talk about freedoms relating to cultural practices and education rights.

These laws were enacted with the advent of the constitution, with only Right to

Education being recognized as a fundamental right later in 2005.

Uniform civil code(herein after called “ UCC ”) ,is not a controversial matter which has erupted because of one or two landmark matters, but a series of events not evenly put forward for getting mass reaction, and the section being adversely affected by it, are women and minor religious communities but be it believers of any religion, all citizens suffer greatly and the same can be understood by the following instances.

1.1 INITIAL UPHEALS BETWEEN PEOPLE OF DIFFERENT RELIGIONS AFTER ADVENT OF UNIFORM CIVIL CODE :

1.1.1 Mohammad Ahmed Khan v. Shah Bano Begum.²

This case was a landmark case in the field of UCC, wherein a Muslim women stood against religious orthodoxy in order to get her maintenance rights from her husband. Mohammad Khan had given irrevocable talaq (triple talaq) to Shah Bano Begum and was ready to dispense off only the maintenance as prescribed under Islamic Law and not as per the procedure prescribed in Criminal Procedure Code.

Subsequently the matter became a rage and witnessed the inspirational and progressive character of Muslim women in the society.

¹Constitution of India,1950.

²AIR 1985 SC 945.



Supreme Court's Judgment was in Shan Bano Begum's favor, which eventually got diluted by an act, namely, The Muslim Women (Protection of Rights on Divorce) Act, 1986 passed by the Parliament in 1986 but most important of all it raised a debate about the rights of women, application of principle of equality and precedence of political populism over rational principles of social justice and human rights

1.1.2 Sarla Mudgal v. Union of India³

Another case, where a Hindu women was subjected to mental agony where her Hindu husband had converted his religion to Islam, thereby solemnizing his Second marriage, as Islamic laws recognizes Second marriage.

The Court held that a Hindu marriage solemnized under the Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act, 1955. Conversion to Islam and Marrying again would not, by itself, dissolve the Hindu marriage under the Act. And, thus, a second marriage solemnized after converting to Islam would be an offense under Section 494⁴ of the Indian Penal Code.⁵

The Judgment was justified and meritorious as, such law would act as a deterrent and precedent, so that no man can take shelter

³ AIR 1995 SC 153.

⁴"Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

⁵Legalservice India.

under the Umbrella of Personal laws to benefit unjustly or veil his mala fide intents.

1.1.3 John Vollamatta V Union of India⁶

Minorities are also affected by the disparities in law ,for instance ,when a Christian priest approached the Court challenging the Constitutional validity of Section 118, which states that "No man having a nephew or a niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a Will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for safe custody of the Will of living persons." of the Indian Succession Act.

The priest from Kerala, John Vallamatton filed a writ petition in the year 1997 stating that Section 118 of the said Act was discriminatory against the Christians as it imposes unreasonable restrictions on their donation of property for religious or charitable purpose by will. The bench comprising of Chief Justice of India V.N. Khare, Justice S.B. Sinha and Justice A.R. Lakshamanan struck down the Section declaring it to be unconstitutional.⁷

1.2Secularism means state has no religion, state has a duty towards relation subsisting between man and man and not man and god. There is a ardent need to draw a line

⁶AIR 2003 SC 2902.

⁷Legal services India.



between customs as a usage and customs as laws. Belief and values need to be supported by rationality in order to be accepted as civil code which will be applicable to all.

2. PERSONAL LAWS

2.1 Personal laws are laws, which are personal to a person, that is, the religion he follows has set of usages and customs regarding his behavior in the society, he is guided and governed by it and is supposed to abide by it, by the virtue of being born in that particular religion.

No doubt, he has the right of conversion, but he is subjected to the laws of the religion professed by him.

Presence of Hindu’s, Muslim’s, Christian’s, Sikh’s, Parsi’s and other small sects of religious groups, calls for different usages and practices for any given particular matter, for instance, maintenance laws are different for Muslims from that of the Hindus or Christians, similarly marriage dissolution laws are also different for different religious groups.

DISTINCTION BETWEEN HINDU, MUSLIM, CHRISTIAN AND PARSI LAWS on specific matters.(major sects of religion in India)

BASIS	HINDU LAW	MUSLIM LAW	CHRISTIAN LAW	PARSI'S LAW
MARRIAGE	A sacred relationship, Where the	Nikah ,an Arabic term , means	It is governed by the Indian Christian	The parties should not be related

	statutory requirement requires consent of both adults, 18 years for women and 21 for men, alive at the time of marriage, usually done by taking Saptapadi (7 rounds) around the sacred fire.	marriage. It means "contract", The Quran specifically refers to Nikah, as a strong agreement.	Marriage Act, 1872, one of the person has to be Christian in order to get married under the above act. Statutory requirement of age and competence to be fulfilled. The marriage should take place between six, in the morning and 7, in the evening. Certificate of marriage issued after payment of fees.	to each other in any of the degrees of consanguinity. They should be consenting adults. Two witnesses to be present at time of issuance of certificate, with a fee of 2 rupees paid by the husband to the registrar of that place.	
SEPARATION/DIVORCE.	Nine grounds for separation are given for dissolution of marriage, namely, adultery, desertion, cruelty, conversion, insanity, leprosy, Venereal disease, renunciation,	Statutory requirement of competence to be fulfilled. Muslim marriage requires proposal 'Ijab', from one party and acceptance 'Qubul' from the other side at one meeting.	Several modes of divorce in Muslim Law. One is, pronouncement of words to signify dismissal, that is,	There are 10 grounds for dissolution of marriage, adultery, cruelty, mutual consent, etc., similar to the grounds mentioned in Hindu	Similar grounds of Divorce as in the case of Hindu marriage Act, 1955.



	presumption of death. Granted in cases where marriage is beyond repair.	talaq. Other is, Ila and Zihar. Initially women could not divorce unless allowed under any agreement, though now they can file for divorce by talaq-i-tafweez and Ilian, or if mutually then, Mubarat or Khula	Marriage Act. The district court is competent to dissolve the marriage and the church has no role to play.			living, keeps a concubine.	personal laws where maintenance is provided irrespective of the age of the claimant i.e. the factor of puberty is not considered. Wife loses the claim of maintenance if she is disobedient and refuses to be accessible at all times. This is not so under the other personal laws	claim for maintenance from the husband. There is no provision for the husband to claim for maintenance.	The claimant has to prove that he/she is not able to maintain himself/herself. There is also a provision for the payment of maintenance to the trustee of the claimant (S.41) ⁸ , on which the Hindu law is silent.
MAINTENANCE	Both spouse can ask for Interim and Pendente lite maintenance. Wife can ask for permanent maintenance, she needs to be lawfully wedded and that she has to prove that she cannot maintain herself and such that if living separately she needs to prove that the husband is found to be guilty on certain grounds like, desertion, has treated her with cruelty, has any other wife	There is no provision of maintenance Pendente lite and interim maintenance in the Muslim law. The Islamic law differs in this aspect as compared to other	maintenance pendente lite and interim maintenance can only be claimed by the wife and not by the husband. In Christian law, only the divorced or judicially separated or divorced wife can	maintenance pendente lite and interim maintenance can only be claimed by the wife and not by the husband. both wife and the husband can claim for maintenance.					
					CUSTODY OF CHILDREN	Children of tender years and older girls should be committed to the custody of the mother whereas, older	Mother has the right of custody so long as she is not disqualified	Christian does not have any provision for custody but the issues	well-established principle that the welfare of the

⁸Payment of alimony to wife or to her trustee.—In all cases in which the Court shall make any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court 39 [or to a guardian appointed by the Court] and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee.]



	<p>boys should be in the custody of the father, But these are judicial statements of general nature & there is no hard and fast rule.</p>	<p>fied. This right is known as right of hizanat and it can be enforced against the father or any other person</p>	<p>are solved by the Indian Divorce Act which is applicable to all of the religions of the country. It depends upon their discretion and merits of the case.</p>	<p>child is paramount that is, the most important thing considered by the Guardian Court when deciding custody .</p>	<p>3.2.6. IT WORKS TO ACCOMMODATE THE ASPIRATIONS OF THE YOUTH OF THE COUNTRY.</p> <p>3.2.7. IT UPHOLDS THE AIM OF NATIONAL INTEGRATION.</p> <p>3.2.8. IT HELPS TO BYPASS THE CONTENTIOUS ISSUE OF REFORM OF PERSONAL LAWS.</p> <p>3.3. The above broad reasons are why UCC should be implemented in India.</p> <p>Whereas, why Personal law should prevail in India, is justified by the following points mentioned below.</p> <p>3.3.4. DIVERSITY IN CULTURE, RELIGION RESULTING IN PRACTICAL DIFICULTIES OF DISPENSING TIMELY JUSTICE.</p> <p>3.3.5. CITIZENS MIGHT FEEL AN ENCHROAMMENT ON THEIR FUNDAMENTAL RIGHT OF RELIGIOUS FREEDOM.</p> <p>3.3.6. APPREHENSION OF INTERFERENCE OF STATE IN PEROSNAL MATTERS.</p> <p>3.3.7. IMPLEMENTATION OF UNIFORM LAW TO BE WELCOMED WITH RESISTANCE IN THE COMING TIME.</p>
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Above are just a few matters, on which the personal law differ . There are a gamut of issues and other minor religious groups, with their own set of laws. In such a situation providing timely Justice becomes a far-fetched dream.

3. PERSONAL LAWS V/s . UNIFORM CIVIL CODE.

3.2.4. UCC PROVIDES EQUAL STATUS TO ALL CITIZENS

3.2.5. IT MAKES SURE THAT THERE IS GENDER PARITY.



4. CONCLUSIONS.

UCC can be of help, when the same is drafted in consonance with Heads of All Personal law makers. Active Participation by all religions groups and attitude to accept dynamic changes needs to be brought about in general public.

Everyone ,in such case, has unhindered right of professing his/her religion, but not being civilly governed by it.

Main objective is that wrong or unjust behavior cannot be justified by camouflaging under Personal law.

A man converting his religion from Hinduism to Islam, to solemnize his second marriage to escape legal liability is wrong, even though a Muslim man is allowed to marry more than once.

Personal laws on the other hand provide power to religious groups who feel empowered to make, amend and follow their own customs, they feel that their culture is, subsisting in society with an identity and the same should spread as well.

Disparity in terms of mostly all laws, are determinant to the position of women in the society and minor groups, even men suffer in certain laws of personal nature, as Under Islamic law, mother has the foremost right to get the custody of the child, similarly , In Islamic law, its is absurd to disallow maintenance of a woman on the ground of disobedience, a woman is not a chattel after all.

Progression demands speedy justice system, law governing the citizens should make this

aim easier to achieve, be it a uniform civil code or personal law.

One Interesting aspect to this situation is, Atheists (people do not believe in god) and LGBTs. (Lesbians, Gays, Bisexual and Transgender).

Most communities shun out LGBTs, so what law should be most appropriate to govern them, as in order to be governed by their own personal law, they need to be accepted as a part of it first.

Similarly, Atheist's should be governed by which personal law is a question of doubt, even though his family believes to belong from a religious group, its his choice to profess any religion or even not.

In such cases, when a large population needs to be managed, the Govt. Needs to find a balance to incorporate reforms in personal laws and suggest personal law heads who make such law, to either bring reforms within the personal law and the bridge the gap between all personal laws, thereby giving equal status to every citizen in the society or to codify such law which is an amalgamation of all personal laws with unanimous consent of all.

